

Study Authority and Study Process

Guidance for conducting Section 216 evaluations is contained in Engineering Regulation (ER) 1105-2-100, dated 22 April 2000, Planning Guidance Notebook, and ER 1165-2-119, dated 20 September 1982, Modifications to Completed Projects.

Section 216 of the 1970 Flood Control Act (Public Law 91–611), as amended, provides general authority for the Secretary of the Army to review operations of completed projects when found advisable due to changed physical, economic, or environmental conditions. Identification of a need to modify structures or operations presumes that the needs exceed the opportunities available under existing project authority (operation and maintenance). A report is made to Congress on the advisability of modifying structures or operations. The Section 216 authority specifies that two additional phases of study be conducted; these are under the General Investigations (GI) program.

General Investigation Authority. A reconnaissance study is the first additional phase of a GI study and is Federally funded. Typically, a reconnaissance study is completed within 12 months. A positive finding of Federal interest for one or more economically justified alternatives is sufficient to enter into coordination with a potential local sponsor for the second phase of study. Non-Federal sponsors may be public agencies such as State, county, city, or other entity fully empowered by State law. The reason for this negotiation is that the second phase of study is cost shared with a non-Federal local sponsor. The reconnaissance study could be initiated when directed by Congress in a water resources development act or water and energy appropriation act and when funded as a new start study in an appropriation act.

The second and more detailed GI study phase is a feasibility study that is equally funded by the Federal government and a local sponsor. The 50/50 cost sharing was implemented by the Water Resources Development Act of 1986. In-kind products and services may satisfy up to 100% of the non-Federal share. Upon completion, the feasibility document supports the decision process of Congress for authorization of implementation (construction). The costs associated with implementing a plan recommended in a feasibility study and subsequently authorized by Congress are traditionally allocated between the Federal government and a local sponsor in accordance with the basic project authority and existing policies – generally a 65% Federal share and a 35% local sponsor share. The Federal participation in GI studies and projects is not capped, but is usually specified by specific Congressional legislation authorizing a project.

Section 1135 Authority. In addition to the GI program, the Corps of Engineers authority, provided under Section 1135 of the Water Resources Act of 1986 as amended, may be applicable to address the logjam or remedies to the environmental conditions resulting from the logjam. Section 1135 provides the authority to modify existing Corps projects or resources affected by projects to restore habitat. A local sponsor must contribute 25% of the cost of the project, and land, easements and rights-of-way are counted as a portion of the cost share. In-kind products and services may also satisfy the local cost-sharing requirement, but not more than 80% of the non-Federal share can be in-kind contributions. The Federal share of a Section 1135 project is capped at \$5 million and includes studies, plans and specifications, and construction.

Funding is appropriated to a discretionary fund managed by the Corps. Any proposed modifications that would exceed the \$5 million Federal limit would require specific Congressional authorization.

Private interests such as Ducks Unlimited or the Nature Conservancy may be a non-Federal sponsor if no future operation and maintenance costs are required.

The first step under Section 1135 is preparation of a Preliminary Restoration Plan (PRP) that consists of a narrative outlining project information, details of the desired project modification, pertinent financial information, and a map of the project area. The cost of the PRP is Federally funded. The PRP acts as a request (within the Corps) to initiate a feasibility study and is submitted to the Corps' higher authority for approval. A request letter from a non-Federal entity must accompany the PRP. The purpose of the request letter is to verify the local sponsor's understanding of their obligations and responsibilities under the program and their willingness and ability to participate as a non-Federal sponsor for project modifications.

The second step is a feasibility study called an Ecosystem Restoration Report (ERR). The project described in the report must be economically feasible; environmentally sustainable, and have local sponsorship. The cost of the feasibility study is initially funded by the Federal government. No funds are available to initiate a Section 1135 study in fiscal year 2005.

Operating Project Authority. Operation and maintenance of existing project facilities provides another opportunity to address the logjam issue. Historically, only the woody debris that has accumulated on the embankment has been removed using operation and maintenance (O&M) authority and funding.

The O&M maintenance measures identified in this report are considered to be within the authority of the project and would be subject to funding through supplemental O&M appropriations. Based on recent trends of declining O&M appropriations, allocating O&M funds to address the logjam would result in delays of other operation or maintenance tasks at John Redmond Dam and Reservoir and/or at one or more other operating projects. This report does not address O&M budget priorities or identify potential maintenance activities that would be deferred. Therefore, this report cannot assess potential risks, hazards, or economic penalties that would be associated with deferred maintenance.